

EXHIBIT

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

- - - - - :
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ULTIMA SERVICES CORPORATION, :
:
Plaintiff, : CASE NO.
:
vs. : 2:20-cv-00041
:
U.S. DEPARTMENT OF :
AGRICULTURE, et al., :
:
Defendants. :
:
- - - - - :

DEPOSITION OF JONATHAN GURYAN

DATE: April 27, 2022
TIME: 9:30 a.m.
LOCATION: Via Zoom Videoconference

REPORTED BY: Constance H. Rhodes
Reporter, Notary

Job No. CS5185100

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| <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of Plaintiff:</p> <p>4 MICHAEL ROSMAN, ESQUIRE</p> <p>5 MICHELLE SCOTT, ESQUIRE</p> <p>6 Center for Individual Rights</p> <p>7 1100 Connecticut Avenue, Northwest</p> <p>8 Suite 625</p> <p>9 Washington, DC 20036</p> <p>10 Rosman@cir-usa.org</p> <p>11</p> <p>12 On behalf of Defendants:</p> <p>13 CHRISTINE T. DINAN, ESQUIRE</p> <p>14 JULIET GRAY, ESQUIRE</p> <p>15 United States Department of Justice</p> <p>16 Employment Litigation Section</p> <p>17 150 M Street, Northeast</p> <p>18 Washington, DC 20002</p> <p>19 (202) 598-1600</p> <p>20 Christine.dinan@usdoj.gov</p> <p>21</p> <p>22 * * * * *</p> | <p>1 P R O C E E D I N G S</p> <p>2 WHEREUPON,</p> <p>3 JONATHAN GURYAN</p> <p>4 called as a witness, and having been first duly</p> <p>5 sworn, was examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>7 BY MS. DINAN:</p> <p>8 Q Good morning. My name is Christine</p> <p>9 Dinan. I'm an attorney with the Department of</p> <p>10 Justice and I represent the defendants in this</p> <p>11 matter. This deposition is being taken pursuant</p> <p>12 to the Federal Rules of Civil Procedure.</p> <p>13 Dr. Guryan, can you please state and spell</p> <p>14 your full name for the record?</p> <p>15 A Jonathan Guryan, J-O-N-A-T-H-A-N,</p> <p>16 G-U-R-Y-A-N.</p> <p>17 Q I understand you have been deposed</p> <p>18 before; is that right?</p> <p>19 A That's correct.</p> <p>20 Q Approximately how many times have you</p> <p>21 been deposed?</p> <p>22 A I think approximately 25 to 30 times.</p> |
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| <p>1 C O N T E N T S</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Defendants 4</p> <p>4 Counsel for Plaintiff 238</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 1 Expert Report of Jonathan Guryan 22</p> <p>9 2 Expert Report of Jon Wainwright 129</p> <p>10 3 Update to the Assessment of Contracting</p> <p>11 Outcomes for Small Disadvantaged</p> <p>12 Businesses 209</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (*Exhibits attached to transcript.)</p> | <p>1 Q Since you've been deposed before, I'm</p> <p>2 not going to spend time going over all the rules</p> <p>3 and reminders, but I do want to go over just a few</p> <p>4 things.</p> <p>5 First, if I ask you a question that you</p> <p>6 don't understand, please ask me to rephrase or</p> <p>7 clarify before answering. If you answer the</p> <p>8 question I will assume that you understood it.</p> <p>9 Second, are you on any medications that</p> <p>10 might affect your ability to give complete and</p> <p>11 accurate testimony today?</p> <p>12 A No.</p> <p>13 Q Is there anything else that might affect</p> <p>14 your ability to give complete and accurate</p> <p>15 testimony today?</p> <p>16 A No.</p> <p>17 Q And I'd also like to ask for your</p> <p>18 agreement to certain things since this deposition</p> <p>19 is being taken remotely via Zoom. Will you agree</p> <p>20 that you not make a recording of any kind of</p> <p>21 today's deposition?</p> <p>22 A I do.</p> |

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| <p>1 the cause of the differences in pay or the</p> <p>2 disparities.</p> <p>3 Q I just want to make sure I understand</p> <p>4 that. The model -- I'm not a economist, I</p> <p>5 apologize for that -- but the model distinguishes</p> <p>6 between discrimination inside the market and</p> <p>7 outside the market; is that right?</p> <p>8 A The model makes predictions about what</p> <p>9 you would expect to see in the data if there is</p> <p>10 discriminations inside the market as opposed to if</p> <p>11 differences in pay are caused by nondiscriminatory</p> <p>12 factors or discrimination outside the market. And</p> <p>13 so we test whether those predictions of the model</p> <p>14 show up in the data and whether other associations</p> <p>15 in the data show up that you might see if they</p> <p>16 were caused by discrimination outside the market</p> <p>17 or nondiscriminatory factors.</p> <p>18 Q When you were running the study did you</p> <p>19 run one test or more than one?</p> <p>20 MR. ROSMAN: Objection to the form of the</p> <p>21 question. You may answer.</p> <p>22 THE WITNESS: There are multiple forms of</p> | <p>1 A No. We don't -- we don't draw</p> <p>2 conclusions about discrimination based on</p> <p>3 regressions of the type that Dr. Wainwright used.</p> <p>4 Q That wasn't my question. You said you</p> <p>5 ran regressions in addition to tests using this</p> <p>6 model. Those are different things, correct?</p> <p>7 A Regressions are useful tools for some</p> <p>8 things. So I certainly have run regressions in</p> <p>9 lots of papers. My criticism of regression is not</p> <p>10 that regressions are flawed fundamentally. It's</p> <p>11 that using a regression of the form that</p> <p>12 Dr. Wainwright used to try to test for</p> <p>13 discrimination is flawed.</p> <p>14 Q That wasn't my question. I'm talking</p> <p>15 about this study that you've described where you</p> <p>16 were studying the role that racial prejudice plays</p> <p>17 on pay. As I understand it, just to be clear, you</p> <p>18 ran regressions as part of that study, and you</p> <p>19 also ran some tests using Becker's economic model.</p> <p>20 Is that correct, or am I misunderstanding</p> <p>21 something?</p> <p>22 A The only analyses in the paper that are</p> |
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| <p>1 the tests. It's hard to say how you would count how</p> <p>2 many tests there are. There certainly are --</p> <p>3 there's more than one result in the paper, and the</p> <p>4 test is run in different ways that are both -- those</p> <p>5 tests are all derived from the economic model.</p> <p>6 BY MS. DINAN:</p> <p>7 Q So is it accurate to say you ran several</p> <p>8 tests using the same model, the same economic</p> <p>9 model, as you've described it?</p> <p>10 MR. ROSMAN: Same objection. You may</p> <p>11 answer.</p> <p>12 THE WITNESS: The same theoretical model</p> <p>13 makes more than one prediction, and we tested more</p> <p>14 than one prediction.</p> <p>15 BY MS. DINAN:</p> <p>16 Q And so you said also ran a regression</p> <p>17 analysis as part of that study, correct?</p> <p>18 A There are regressions run in that study,</p> <p>19 yes.</p> <p>20 Q That's two types of analyses --</p> <p>21 regressions and tests -- using this model, is that</p> <p>22 accurate? Am I understanding that correctly?</p> | <p>1 testing for discrimination are the ones that are</p> <p>2 based on Becker's economic model. In performing</p> <p>3 the analyses in the paper for other purposes,</p> <p>4 there are some regressions that we used.</p> <p>5 Q And what were those other purposes that</p> <p>6 regressions were run for?</p> <p>7 A Well, so in order to calculate what the</p> <p>8 wage gaps are between black and white workers at</p> <p>9 the state level, we ran regressions to calculate</p> <p>10 those differences in pay.</p> <p>11 Q Okay. So I guess my question is, it</p> <p>12 sounds like you ran more than one test. I</p> <p>13 understand the regressions were studying something</p> <p>14 different than the economic model was, but you</p> <p>15 also said you tested several predictions. So is</p> <p>16 it fair to say that were several tests or analyses</p> <p>17 run as part of this study?</p> <p>18 A It is fair to say that there were --</p> <p>19 there was more than one test done or analysis</p> <p>20 that's in that paper.</p> <p>21 Q Does the fact that multiple tests were</p> <p>22 run give you greater confidence in the conclusions</p> |

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| <p>1 that were reached in that study?</p> <p>2 A So in that study we ran the tests in</p> <p>3 different ways that were predicted by the -- and</p> <p>4 implied by the economic model. And yes, the fact</p> <p>5 that the results are consistent across those</p> <p>6 different ways of running the test did give me</p> <p>7 more confidence that the conclusion was correct.</p> <p>8 MS. DINAN: Okay. I'm happy to move on.</p> <p>9 We've been going for about an hour and a half now.</p> <p>10 Do folks need a break or do you want to go a little</p> <p>11 further before we take one? How is everyone doing,</p> <p>12 including Ms. Rhodes.</p> <p>13 THE REPORTER: I'm okay.</p> <p>14 BY MS. DINAN:</p> <p>15 Q Okay. So paragraph 6 is the next one I</p> <p>16 want to test in your report. "Statistical Tests</p> <p>17 for the Existence of Discrimination." That's on</p> <p>18 page 8.</p> <p>19 You note in your report that if a social</p> <p>20 scientist can't reject the possibility that a</p> <p>21 disparity in outcomes between two groups could have</p> <p>22 been generated in the absence of the type of</p> | <p>1 to consider whether both nondiscriminatory factors</p> <p>2 and other types of discrimination other than the</p> <p>3 type that the researcher is trying to test for</p> <p>4 contributed to or caused the disparity that the</p> <p>5 researcher observes.</p> <p>6 Q If a social scientist, as you said,</p> <p>7 can't reject the possibility that a disparity</p> <p>8 could have been generated in the absence of</p> <p>9 whatever discrimination you are testing for -- I</p> <p>10 understand you are saying he can't conclude that</p> <p>11 that type of discrimination caused a disparity --</p> <p>12 can he conclude that some type of discrimination</p> <p>13 caused the disparity or may have caused the</p> <p>14 disparity?</p> <p>15 MR. ROSMAN: Objection to the form of the</p> <p>16 question. Compound. Go ahead.</p> <p>17 THE WITNESS: Now you have changed the</p> <p>18 question that the researcher is asking. Now, as I</p> <p>19 understand the question, it's whether a disparity</p> <p>20 was caused by any discrimination of any type. If</p> <p>21 that is --</p> <p>22</p> |
| Page 63 | Page 65 |
| <p>1 discrimination in question, then he can't conclude</p> <p>2 that the particular type of discrimination caused</p> <p>3 the disparity.</p> <p>4 What do you mean here when you say "the</p> <p>5 type of discrimination in question"?</p> <p>6 A You are referring to the middle</p> <p>7 paragraph on page 9? That's where you are reading</p> <p>8 from?</p> <p>9 Q Yes.</p> <p>10 A What I'm referring to there is that</p> <p>11 there is some question that the researcher-analyst</p> <p>12 is trying to answer and that question might be</p> <p>13 that they are trying to answer whether, say,</p> <p>14 discrimination by employers in a labor market</p> <p>15 causes differences in pay. That is a particular</p> <p>16 type of discrimination. There's other types of</p> <p>17 discrimination that one might test for that might</p> <p>18 exist in the world. That is the type of</p> <p>19 discrimination in that example that the researcher</p> <p>20 is trying to test for.</p> <p>21 If that is the question that the</p> <p>22 researcher is trying to answer, then it's necessary</p> | <p>1 BY MS. DINAN:</p> <p>2 Q Yes.</p> <p>3 A If that is the question, then one must</p> <p>4 consider whether a disparity was caused by any</p> <p>5 nondiscriminatory factor.</p> <p>6 Q Okay. Same question. But could he</p> <p>7 conclude that the results are consistent with</p> <p>8 discrimination?</p> <p>9 A I think it would be inappropriate and</p> <p>10 misleading to draw a conclusion that a disparity</p> <p>11 is consistent with discrimination without</p> <p>12 considering whether the disparity was caused by</p> <p>13 factors other than discrimination.</p> <p>14 Q Just to clarify, is the standard you are</p> <p>15 really looking at here causation, trying to</p> <p>16 determine what caused a disparity?</p> <p>17 A I want to be real careful because it may</p> <p>18 be that that word "causation" has a different</p> <p>19 meaning in the legal sense than the way I used it</p> <p>20 as a social science researcher.</p> <p>21 What I'm saying is that if there's a</p> <p>22 disparity. So there's a difference in outcomes</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 differences in the capacity.</p> <p>2 How many of the 205 studies that</p> <p>3 Dr. Wainwright reviewed do you believe failed to</p> <p>4 control for firm size or capacity?</p> <p>5 A I don't know exactly how many, but many</p> <p>6 of them.</p> <p>7 Q How would you measure capacity?</p> <p>8 A In the context of calculating a</p> <p>9 disparity index?</p> <p>10 Q No. In the context of determining the</p> <p>11 capacity of a business?</p> <p>12 A So I couldn't tell you a specific</p> <p>13 variable that I would use. This is not a -- I was</p> <p>14 not -- you know, I didn't design a disparity index</p> <p>15 or a disparity study myself here, so I haven't</p> <p>16 gone through all the details of figuring out the</p> <p>17 exact specifics of how I would try to control for</p> <p>18 capacity.</p> <p>19 The idea would be to try to control for</p> <p>20 differences in the size of firms and features of</p> <p>21 firms that allow them to take on projects of</p> <p>22 different size and different numbers of projects at</p> | <p style="text-align: right;">Page 160</p> <p>1 saying that the study should have controlled for</p> <p>2 capacity. If the goal of the study was to measure</p> <p>3 disparity without trying to draw a conclusion</p> <p>4 about whether that disparity was caused by</p> <p>5 discrimination, then it may not have been</p> <p>6 necessary to control for capacity.</p> <p>7 What my opinion is is that given that many</p> <p>8 of the studies don't control for capacity, it's</p> <p>9 inappropriate to draw a conclusion based on the</p> <p>10 calculations of disparities from those studies that</p> <p>11 there was discrimination.</p> <p>12 Q Okay. You don't have an opinion as to</p> <p>13 the correct way to measure capacity in that</p> <p>14 context?</p> <p>15 A No, I don't. I don't have a full</p> <p>16 solution of how one should fully control for</p> <p>17 capacity. I think it's difficult, and partly</p> <p>18 because it is difficult, it's inappropriate to</p> <p>19 draw a conclusion that the disparity is the result</p> <p>20 of discrimination as opposed to capacity, which is</p> <p>21 either not measured or hard to measure.</p> <p>22 Q A few moments ago you mentioned size of</p> |
| <p style="text-align: right;">Page 159</p> <p>1 the same time. That, you know, measuring that may</p> <p>2 be difficult, so I'm not sure I have an obvious</p> <p>3 solution about the way that I think that that should</p> <p>4 be done.</p> <p>5 But my criticism is different. My</p> <p>6 criticism is not -- my criticism is that when one</p> <p>7 sees the disparity that does not fully or at all</p> <p>8 control for capacity, it's inappropriate to draw a</p> <p>9 conclusion that that disparity is the result of</p> <p>10 discrimination as opposed to differences in</p> <p>11 capacity.</p> <p>12 Q Okay. So I understand it, your</p> <p>13 criticism is that capacity should have been</p> <p>14 controlled for and was not, but you don't have an</p> <p>15 opinion as to the appropriate way to measure</p> <p>16 capacity.</p> <p>17 A I wouldn't agree with that quite in the</p> <p>18 way that you said it. What I would say is that</p> <p>19 it's inappropriate to draw a conclusion about</p> <p>20 discrimination given the way that capacity either</p> <p>21 was not controlled for or controlled for</p> <p>22 insufficiently. Your question suggested that I'm</p> | <p style="text-align: right;">Page 161</p> <p>1 the firm is potentially relevant to this. Do you</p> <p>2 believe that firms can vary their size based on</p> <p>3 demand?</p> <p>4 A I believe that they can do that to some</p> <p>5 extent. I don't believe that's unlimited, and I</p> <p>6 believe it's costly. And I believe it's costly to</p> <p>7 do so quickly. And the fact there are differences</p> <p>8 in firm size can contribute to differences in the</p> <p>9 likelihood that firms will bid on contracts and</p> <p>10 also could contribute to the likelihood that they</p> <p>11 might receive or win a bid if decisions about who</p> <p>12 wins bids are based on beliefs by the decision</p> <p>13 maker about whether the firm is going to be able</p> <p>14 to deliver on the contract that they bid on.</p> <p>15 Q If you were attempting to measure</p> <p>16 capacity how would you account for this, you know,</p> <p>17 the fact that firms can change their size based on</p> <p>18 demand?</p> <p>19 A That's one of the reasons why measuring</p> <p>20 capacity is difficult, as I said earlier. But</p> <p>21 that's also one of the reasons why, because it's</p> <p>22 difficult to measure, it's inappropriate to draw a</p> |

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| <p style="text-align: right;">Page 162</p> <p>1 conclusion based on a disparity that doesn't fully</p> <p>2 control for capacity that there is discrimination.</p> <p>3 Q Did you perform any calculations to</p> <p>4 determine the effects of differences in a firm's</p> <p>5 capacity, if they existed, would have on</p> <p>6 Dr. Wainwright's analysis?</p> <p>7 A I did not.</p> <p>8 Q Did you attempt to recalculate any of</p> <p>9 the disparity indexes in the reports that</p> <p>10 Dr. Wainwright reviewed accounting for capacity?</p> <p>11 A No.</p> <p>12 Q Do you believe that any differences in</p> <p>13 the capacity between minority-owned and</p> <p>14 nonminority-owned firms could be influenced by</p> <p>15 discrimination?</p> <p>16 A I believe that to the extent there's</p> <p>17 differences in capacity between minority- and</p> <p>18 nonminority-owned firms, that can be the result of</p> <p>19 discrimination in some form. That's a different</p> <p>20 question than whether it is the result of</p> <p>21 discrimination in the contracting -- federal</p> <p>22 contracting market, and it's also a different</p> | <p style="text-align: right;">Page 164</p> <p>1 Q In your report you describe a</p> <p>2 hypothetical industry in which there are many</p> <p>3 smaller businesses and few -- very few large</p> <p>4 businesses, and the few large businesses are</p> <p>5 nonminority-owned. This is on page 19 of your</p> <p>6 report, but I'm just paraphrasing.</p> <p>7 You note that if businesses in this</p> <p>8 industry bid for contracts that are proportionate to</p> <p>9 their size and contracts are awarded at equal rates</p> <p>10 to every business that bids for a contract, the</p> <p>11 ratio of utilization to availability will be lower</p> <p>12 for minority than nonminority businesses.</p> <p>13 My question is what evidence do you have</p> <p>14 that businesses bid on contracts proportionate to</p> <p>15 their size?</p> <p>16 MR. ROSMAN: I'm going to ask to have just</p> <p>17 the question, the last sentence, read back. I</p> <p>18 didn't really hear it.</p> <p>19 (Whereupon, the Reporter read the record</p> <p>20 as requested.)</p> <p>21 MR. ROSMAN: I'm going to object to the</p> <p>22 form of the question then. Go ahead.</p> |
| <p style="text-align: right;">Page 163</p> <p>1 question from whether it is the result of current</p> <p>2 versus historical discrimination.</p> <p>3 Q Okay. But what if the question is just</p> <p>4 if there is discrimination in the contracting</p> <p>5 market nationwide and discrimination of any type?</p> <p>6 A Again, I refer to discrimination outside</p> <p>7 of the contracting market. So the fact that there</p> <p>8 are differences in capacity, to the extent that</p> <p>9 that's true, that could be the result of</p> <p>10 discrimination outside of the federal contracting</p> <p>11 market. It could be the result of discrimination</p> <p>12 in markets that happened in the past. It could be</p> <p>13 the result of other factors. Without an analysis</p> <p>14 of that, you know, it's not appropriate to draw</p> <p>15 conclusions about discrimination in the</p> <p>16 contracting market.</p> <p>17 Q Have you performed any tests or analysis</p> <p>18 to determine whether there is -- whether</p> <p>19 differences in capacity of minority- and</p> <p>20 nonminority-owned firms are influenced by</p> <p>21 discrimination?</p> <p>22 A I haven't.</p> | <p style="text-align: right;">Page 165</p> <p>1 THE WITNESS: So I'm -- this part of the</p> <p>2 report that you're pointing to, I'm describing a</p> <p>3 hypothetical example to make -- to illustrate the</p> <p>4 broader point that without controlling for or</p> <p>5 considering the role that capacity might play in</p> <p>6 determining utilization relative to availability,</p> <p>7 it's inappropriate to draw a conclusion that the</p> <p>8 difference in the ratio of utilization to</p> <p>9 availability is caused by discrimination. And this</p> <p>10 is a hypothetical example that would be one</p> <p>11 situation where capacity would play a role that none</p> <p>12 of -- sorry, I won't say none -- that many of the</p> <p>13 studies that Dr. Wainwright relied on don't adjust</p> <p>14 for.</p> <p>15 And so my opinion is that a summary of</p> <p>16 all of those studies that include at least some</p> <p>17 that don't adjust for differences in capacity</p> <p>18 can't appropriately lead to a conclusion that the</p> <p>19 disparity and utilization is the result of</p> <p>20 discrimination.</p> <p>21 BY MS. DINAN:</p> <p>22 Q I understand it's a hypothetical, but my</p> |

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| <p>1 question is do you have any evidence that</p> <p>2 businesses bid on contracts proportionate to their</p> <p>3 size? Are you aware of any evidence of that?</p> <p>4 A I can't think of a study off the top of</p> <p>5 my head that says one way or the other, but I</p> <p>6 haven't seen an analysis by Dr. Wainwright showing</p> <p>7 that it's not true.</p> <p>8 Q Do you recall that capacity is a static</p> <p>9 notion?</p> <p>10 A No. I think firms grow and shrink over</p> <p>11 time, and they make investments that can change</p> <p>12 their capacity.</p> <p>13 Q Some other criticisms you've made of the</p> <p>14 disparity studies in your report, you contend that</p> <p>15 the disparity study that is published by a state</p> <p>16 or local government as support for a particular</p> <p>17 DBE program is likely to show disparities that the</p> <p>18 program is intended to remedy.</p> <p>19 That's on page 15 of your report. What is</p> <p>20 the basis for this assertion?</p> <p>21 A My understanding from Dr. Wainwright's</p> <p>22 report and his deposition is that the way he got</p> | <p>1 be aware of those either.</p> <p>2 Q You don't have any actual evidence</p> <p>3 that's in fact true, that those studies -- you</p> <p>4 know, studies were not published because they</p> <p>5 didn't show disparities, correct?</p> <p>6 A I couldn't name a specific study, no.</p> <p>7 I'm talking about the logic of the way that the</p> <p>8 studies become published so that Dr. Wainwright</p> <p>9 gets access to them well.</p> <p>10 Q Did you review each of the 205 disparity</p> <p>11 studies that Dr. Wainwright reviewed to determine</p> <p>12 whether there were disparities overall in the</p> <p>13 utilization of minority-owned businesses in each</p> <p>14 of those studies?</p> <p>15 A I did not redo Dr. Wainwright's</p> <p>16 calculations.</p> <p>17 Q That wasn't my question. My question</p> <p>18 was did you review them specifically to determine</p> <p>19 whether there were any studies that did not find</p> <p>20 any disparities?</p> <p>21 A I don't believe there are any studies in</p> <p>22 Dr. Wainwright's sample that show no disparities</p> |
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| <p>1 these 205 studies is that these are the ones that</p> <p>2 have been published by the entities that are</p> <p>3 running DBE programs. And I'm raising the</p> <p>4 possibility that if the DBE program exists, that</p> <p>5 means it has been justified. And if there are</p> <p>6 other studies that have been done that didn't show</p> <p>7 disparities and led to DBE programs not existing,</p> <p>8 then it's possible that Dr. Wainwright wouldn't</p> <p>9 see those studies because those studies wouldn't</p> <p>10 ever be made public.</p> <p>11 Q Are you aware of any published studies</p> <p>12 that show that there were no disparities over all?</p> <p>13 A Sorry. The point of my answer to the</p> <p>14 last question is that the studies that don't find</p> <p>15 any disparities overall might not ever be</p> <p>16 published.</p> <p>17 Q I understand. You are saying might. I</p> <p>18 guess I'm saying are you aware of any studies that</p> <p>19 were not published because they did not show</p> <p>20 disparities?</p> <p>21 A I am not aware of those, and my point is</p> <p>22 that I would expect that Dr. Wainwright might not</p> | <p>1 in any of the markets or submarkets that they</p> <p>2 evaluated. But that's a different point from the</p> <p>3 point I'm making in the section of the report that</p> <p>4 you are asking about.</p> <p>5 Q Right. I think there are two separate</p> <p>6 questions. One is whether there were any that</p> <p>7 were not published because they didn't have</p> <p>8 disparities. We talked about that.</p> <p>9 The other is whether, of the studies in</p> <p>10 the sample, the 205 studies in the sample, is it</p> <p>11 your understanding that each of those studies had a</p> <p>12 finding -- and I'm not asking about specific</p> <p>13 markets -- that they all -- each of those studies</p> <p>14 had results that show that there were disparities</p> <p>15 overall in the utilization of minority-owned</p> <p>16 businesses?</p> <p>17 A I did not see any that didn't show any</p> <p>18 disparity at all such that it would -- could be</p> <p>19 used to justify the existence of a DBE program.</p> <p>20 Q You also criticized Dr. Wainwright's</p> <p>21 analysis of disparities in the industry that</p> <p>22 plaintiff operates in is not specific enough</p> |